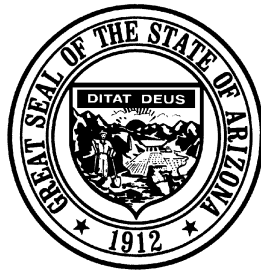

Arizona Commission on Judicial Conduct



HANDBOOK

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State of Arizona
COMMISSION ON JUDICIAL CONDUCT

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INTRODUCTION

This handbook provides an overview of the purpose and functions of the Arizona Commission on Judicial Conduct. It describes the nature of judicial misconduct and explains how to file a complaint against a judge who may have committed misconduct. It also contains a copy of the Code of Judicial Conduct, which all judges are required to follow, and summaries of state supreme court decisions involving judicial discipline.

Background

The Commission on Judicial Conduct was created in 1970 when voters approved Article 6.1 of the Arizona Constitution. The new article established the commission as an independent state agency responsible for investigating and acting upon complaints of judicial misconduct or disability against judges of courts of record. A subsequent amendment in 1988 gave the commission broad authority to deal with all complaints involving judges serving on the supreme court, courts of appeals, superior courts, justice courts, and municipal courts throughout Arizona.

Similar judicial conduct commissions exist in all states and the District of Columbia. These commissions play a vital role in maintaining public confidence in the courts and in preserving the integrity of the judicial process. They also serve to encourage judges to maintain high standards of professional and personal conduct.

Organization

The commission is comprised of eleven members who serve staggered six-year terms. They are appointed from various organizations so that a broad range of knowledge and experience can be brought to bear on resolving complaints effectively. Six judges are appointed by the supreme court: two from the courts of appeals, two from the superior courts, one from the justice courts, and one from the municipal courts. Two attorneys are appointed by the board of governors of the State Bar of Arizona. Three public members, who cannot be attorneys, active judges, or retired judges, are appointed by the governor and confirmed by the state senate.

The commission meets regularly to conduct its official business and holds telephone conferences and formal hearings as frequently as needed. Individual members are not compensated for their work but may be reimbursed for travel and out-of-pocket expenses such as telephone calls and postage. The day-to-day activities of the commission are administered by its executive director and a small staff located in Phoenix.

Scope of Authority

The commission is authorized to investigate complaints that allege one or more of the following constitutional grounds for disciplining a judge:

1. Willful misconduct in office (Article 6.1, § 4);
2. Willful and persistent failure to perform duties (Article 6.1, § 4);
3. Habitual intemperance (Article 6.1, § 4);
4. A permanent disability that seriously interferes with the performance of the judge's duties (Article 6.1, § 4);
5. A violation of the Code of Judicial Conduct; or
6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute (Article 6.1, § 4).

The Code of Judicial Conduct consists of five broad standards or canons adopted by the supreme court to govern the ethical conduct of judges. Each canon contains detailed sections and commentary explaining different aspects of the code. The complete code is on the commission's web site. A shorter version without commentary is contained in this handbook.

Jurisdiction

The commission is only authorized to investigate complaints involving a judge's ethical or personal conduct. It cannot review a judge's decisions, except as necessary in order to understand alleged misconduct, and cannot take action against a judge whose legal rulings are made in good faith. The commission is not an appellate court and cannot change a judge's ruling. This limitation is frequently misunderstood and is one of the primary reasons that complaints are dismissed. Litigants who are dissatisfied with the rulings in their cases should file appeals in the appropriate court. By law, small claims cases cannot be appealed.

The commission has no jurisdiction over court employees, administrative law judges, or federal judges. Complaints against court employees should be addressed to the presiding judge of the respective court. Complaints against federal judges can be filed with the Ninth Circuit Court of Appeals in accordance with 28 U.S.C. § 372(c).

Examples of Misconduct

Judges may be disciplined for various types of misconduct. The following are examples of problems for which judges have been informally or formally disciplined:

- Abusing the power or authority of the judicial office.
- Attempting to influence another judge.
- Delay in making decisions.
- Driving under the influence of alcohol.
- Engaging in charitable fund raising.
- Participating in ex parte communications.
- Failing to respond to a commission inquiry.
- Giving legal advice to parties in a lawsuit.
- Interrupting court to perform weddings.
- Using offensive language on and off the bench.
- Making suggestive sexual remarks.
- Using abusive language with court employees.

Sexual Harassment

In 1992, the Arizona Supreme Court adopted a statewide policy on sexual harassment under which judges and court employees are required to report such conduct to court officials or local government agencies. Complaints alleging judicial sexual harassment should be referred to the Commission on Judicial Conduct for formal investigation. The definition of sexual harassment can be found in Administrative Order 92-33 (October 19, 1992). Copies of the order may be obtained from the commission office.

Rules

The constitution authorizes the supreme court to approve the commission's rules, which prescribe the steps for filing complaints and the procedures in formal cases. The responsibilities of the commission's officers and staff are also described in the rules. The complete text of the commission rules is contained in this handbook and on the commission's web site.

Confidentiality

The state constitution requires the supreme court to make rules governing the confidentiality of commission proceedings. Under existing rules, the level of confidentiality is determined by the outcome of the case. For example, if a complaint is dismissed for lack of evidence or because it falls outside the jurisdiction of the commission, the original complaint and the order dismissing the case will be available for public inspection after names and other identification have been removed from the documents. If, on the other hand, a complaint results in an informal reprimand, the complaint, the judge's response and the commission's order will be released with the names intact. In formal cases involving censure, suspension or removal of a judge from office, the entire formal file and any related hearings will be open to the public.

Commission correspondence, computer records, investigative reports, attorney work product, and the minutes of commission deliberations are kept confidential and are not released to the public.

The commission may disclose confidential information about a judge's conduct to judicial nominating commissions and other official agencies charged with evaluating the qualifications of a judge.

Reports

In addition to this handbook, the commission produces several reports aimed at informing the judiciary and the public about its work. In a cooperative venture with the Arizona Supreme Court's Judicial Ethics Advisory Committee, the commission's staff edits and publishes *Judicial Conduct and Ethics: A Reference Manual for Arizona Judges* and the *Judicial Conduct and Ethics Bulletin*, a newsletter of current issues and developments in this area of the law. These publications are only available on the commission's web site.

THE COMPLAINT PROCESS

The commission's complaint process is divided into several phases consisting of a number of well-defined steps. This section describes in general terms what happens in each phase. The rules contained in a later section provide more detailed information on how the commission actually works.

Filing a Complaint

Any person who believes that a judge has committed misconduct, or that a judge has a disability which seriously interferes with the performance of judicial duties, may file a complaint with the commission. The complaint can be filed on an official complaint form (or submitted as a letter) and must be signed by the person alleging the misconduct. The form is available free of charge from the commission's office or on its web site.

The complaint should describe all the facts and circumstances relating to the conduct of the judge and should specify exactly what the judge did that constitutes misconduct. Complaints may be typed or printed, but any complaint that is legible and properly signed will be accepted.

A general allegation about a judge's decision or the judge's fitness for office is not sufficient to justify an investigation of the judge's conduct. If the alleged misconduct involves a series of events, it is usually helpful to describe the events in chronological order. If the misconduct arises out of a court case, the number of the case and the names of the attorneys who represented the parties should be included in the complaint. Original court documents should not be filed with the complaint, and copies of lengthy court pleadings or transcripts should not be submitted unless they contain vital information relating to the alleged misconduct.

Complaints may be mailed or delivered in person to the commission's office. Complaints that are clearly written may also be transmitted to the commission via fax, but an original cover page with the complainant's signature and date must still be filed with the commission.

Initial Screening

When a new complaint arrives at the commission's office, it is reviewed by the staff to determine whether the commission has the authority to investigate the allegations. The complaint must clearly identify a state or local judge (not a court employee, an administrative judge, or a federal judge) and must describe a specific act of misconduct on the part of the judge. If a com-

plaint fails to allege judicial misconduct, or is frivolous, unfounded, or otherwise outside the scope of the commission's authority, the executive director may dismiss the complaint. The commission reviews the executive director's decisions during its regular meetings and at other times throughout the year. As a general rule, complainants and judges are both notified when complaints are dismissed or otherwise resolved.

Preliminary Investigation

If a complaint properly alleges judicial misconduct, the staff will conduct a confidential preliminary investigation and report its findings to the commission. The investigation may simply entail asking the judge to respond to the complaint, or it may involve interviewing the complainant, taking testimony from witnesses, examining records, and studying court documents and files. The complaint may be dismissed at any time during the investigation if the facts do not support the allegations.

Throughout the preliminary stages, the judge and the complainant are protected by rules governing confidentiality. The commission cannot reveal the fact that a complaint has been filed, and it will only discuss the resolution of the complaint with the complainant and the judge. The commission may respond publicly to allegations of judicial misconduct that become widely publicized in the local community.

Dispositions in General

The commission may dismiss a complaint that fails to allege an act of judicial misconduct, that lacks sufficient evidence to support an investigation, that is solely appellate in nature, or that is otherwise frivolous, unfounded or outside its jurisdiction. A dismissal may be issued with confidential comments reminding a judge of ethical obligations or recommending changes in behavior or procedures.

If the commission finds judicial misconduct, it may, in addition to any other sanction imposed, direct a judge to participate in professional counseling, judicial education, mentoring, or other similar activities.

The commission may also confer confidentially with a judge to discuss alternatives such as voluntary retirement or resignation from judicial office. If a judge agrees to retire or resign while a complaint is pending, the commission may dismiss the complaint or take other appropriate action.

Formal Sanctions

When an investigation reveals substantial misconduct that cannot be resolved informally, the commission may initiate formal proceedings against the judge. This phase begins when an investigative panel of three commission members decides that there is reasonable cause to believe that the judge has violated one or more of the grounds for judicial discipline. At this point, the panel may authorize disciplinary counsel to file formal charges and schedule the case for a hearing.

As soon as the judge files an answer to the charges, or after the time for filing an answer has run without receiving a response from the judge, the proceedings become public and the commission may no longer resolve the case informally. The judge may still consent to public censure or some other sanction, but any stipulation or agreement accepted by the commission after the start of formal proceedings must be made public.

Hearings

The formal hearing is held before the eight members of the commission who did not participate on the investigative panel. The hearing is conducted much like a trial, and counsel for both sides are allowed to present evidence and question witnesses. The proceedings are open to the public and are recorded by an official court reporter. Members of the hearing panel are not permitted to discuss the case with the investigative panel.

At the conclusion of the hearing, or upon entering into an agreement with the judge, the hearing panel may dismiss the complaint or impose any of the informal sanctions available to the commission. It may also recommend to the supreme court that the judge be censured, suspended without pay, removed from office or retired.

Supreme Court Review

The hearing panel's recommendations are served on the parties and filed with the clerk of the supreme court. The judge may ask the court to reject the recommendations and may request oral argument. Alternatively, the judge may accept the commission's recommendations, and the clerk may enter judgment immediately. The court's decision is final and cannot be appealed.

What To Expect

The commission is committed to carrying out its constitutional responsibilities and to responding fairly and objectively to each complaint. It is the commission's duty to make no advance assumptions about the truthfulness of a particular complaint, and judges are asked to re-

spond candidly and thoroughly to all complaints that are not frivolous, unfounded, or solely appellate in nature. A judge is not expected to conduct an investigation or to use court staff to respond. A simple, straightforward explanation is all that is needed in most cases.

Every effort is made to resolve complaints promptly, and complainants are notified of the status of the outcome of investigations. Complainants and judges may call the commission office at any time to discuss procedures or to determine the status of a complaint.

CODE OF JUDICIAL CONDUCT

Arizona judges are subject to the Code of Judicial Conduct adopted by the Arizona Supreme Court in 1993 and most recently amended in June 2004. The Arizona code is based on the 1990 version of the American Bar Association's Model Code of Judicial Conduct, and both codes contain the five major canons or principles listed below. The full text of the Arizona Code is published in this section without the commentary described in the preamble. The complete code with commentary can be found on the commission's website.

THE CANONS OF JUDICIAL CONDUCT

1. A judge shall uphold the integrity and independence of the judiciary.
2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
3. A judge shall perform the duties of judicial office impartially and diligently.
4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.
5. A judge or judicial candidate shall refrain from inappropriate political activity.

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called canons, specific rules set forth in sections under each canon, a terminology section, an application section and commentary. The text of the canons and the sections, including the terminology and application sections, is authoritative. The commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the canons and sections. The commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a

judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The canons and sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the code would be subverted if the code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the canons and sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

The following terms have specific meanings within the context of this code. The sections where the terms

appear are referred to after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. *See* Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, authorizes circulation of a nominating petition, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. *See* Preamble and Sections 5A, 5B, and 5C.

"Court personnel" does not include the lawyers in a proceeding before a judge. *See* Sections 3B(7)(c) and 3B(9).

"Financial interest" means ownership of a legal or equitable interest of substance or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create a financial interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not a financial interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not a financial interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. *See* Sections 3E(1)(c) and 3E(2) and definition of "interest of substance."

"Fiduciary" includes such relationships as executor, administrator, trustee, guardian, personal representative, and conservator. *See* Sections 3E(2) and 4E.

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. *See* Sections 2A, 3B(10), 3E(1), 4C(4), 5B(1)(a) and 5B(1)(d)(i).

"Interest of substance" denotes any financial interest in a closely held corporation or business and, in the case of a publicly held corporation, denotes a legal or equitable interest, the value of which is likely to be increased or decreased to any material extent by the outcome of the litigation. *See* definition of "financial interest."

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. *See* Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. *See* Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(4), and 5B(2).

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. *See* Section 5B(1)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Sections 4D(3), 4E and 4G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. *See* Sections 3E(1)(c) and 4D(5).

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. *See* Section 3B(11).

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. *See* Section 5A(1).

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. *See* Section 5B.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. *See* Sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. *See* Section 3E(1)(d).

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to further that objective.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the

duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(13) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory responsibility for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities.

(1) A judge who has knowledge or who receives reliable information that another judge has committed a violation of this code shall take or initiate appropriate action. A judge who has knowledge or who receives reliable information that another judge has committed a violation of this code that raises a substantial question as to the judge's honesty, trustworthiness or fitness as a judge in other respects shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law within the preceding seven (7) years served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(i) an issue in the proceedings; or

(ii) the controversy in the proceedings.

(2) A judge shall keep informed about the judge's personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement should be incorporated in the record of the proceeding.

CANON 4

A Judge Shall So Conduct the Judge's Extra-judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this code.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities except that a judge may be an announced speaker at a fund-raising event benefitting indigent representation or public institutions of legal education. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

(4) A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer,

director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(b) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose, but a judge may be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. Except as permitted by paragraph C(3) above, a judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

(c) A judge should not give investment advice to such an organization, but a judge may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and

other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds the statutory minimum for financial disclosure, the judge reports it in the same manner as the judge reports compensation in Section 4H.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall report compensation for extra-judicial activities as required by law.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

J. Wedding Ceremonies.

(1) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(2) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(3) A judge shall not advertise his or her availability for performing wedding ceremonies.

(4) A judge shall not charge or accept a fee, honorarium, gratuity or contribution for performing a wedding ceremony during court hours.

(5) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

CANON 5

A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.

A. Political Conduct in General

(1) A judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment to a political organization or candidate, or make contributions to a political party or organization or to a non-judicial candidate in excess of a combined total of Two Hundred Fifty Dollars per year; or

(d) actively take part in any political campaign other than his or her own election, reelection or retention in office.

(2) A judge or a non-judge who is a candidate for judicial office may speak to political gatherings on his or her own behalf.

(3) A judge may purchase tickets for political dinners or other similar functions but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these canons.

(4) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(5) Except as otherwise permitted in this code, a judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Judicial Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit selection system or retention election:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the sections of this Canon;

(c) shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the sections of this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5B.

(2) A candidate, including an incumbent judge, for a judicial office, whether by a contested election or seeking the retention of the office according to law, shall comply with the Arizona statutes relating to the financial aspects of the candidacy. All candidates should refrain from personally soliciting campaign contributions. They should refer prospective contributors to the candidate's campaign committee.

(3) An incumbent judge who is a candidate for retention in or re-election to office may campaign for retention in or re-election to office; may obtain publicly stated support; and in the manner provided in subsection B(2) may obtain campaign funds.

C. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to

judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to ER 8.2(b) of the Arizona Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Judge. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, hearing officer or referee, is a judge within the meaning of this code. All judges shall comply with this code except as provided below.

B. Retired Judge Available for Assignment. A retired judge available for assignment to judicial service and during such service is not required to comply with Sections 4C(2), 4D(2), 4D(3), 4E, 4F, 4G, 4H and 4I.

C. Part-time Judge. A part-time judge is a person who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

(1) A part-time judge is not required to comply

(a) except while serving as a judge, with Section 3B(9);

(b) at any time, with Sections 4C(2), 4C(4)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, and 5A(1).

(2) A part-time judge shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

D. Pro Tempore Part-time Judge. A pro tempore part-time judge is a person appointed pursuant to Article 6, Section 31 of the Arizona Constitution, A.R.S. § 22-122, or municipal charter or ordinance, who serves on less than a full-time basis under a separate appointment by a presiding judge for each period of less than full-time service or for each case heard.

(1) A pro tempore part-time judge is not required to comply

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(4), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, and 5A(1).

(2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

(5) A part-time pro tempore judge who is appointed to perform judicial functions of a non-appealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.

E. Pro Tempore Full-Time Judge. A pro tempore full-time judge is a person appointed pursuant to A.R.S. § 12-144 who serves full-time for the full six months allowed by statute. A pro tempore full-time judge:

(1) is subject to all the provision of this code;

(2) may not engage in the practice of law during such full-time service.

F. Time for Compliance. A person to whom this code becomes applicable shall comply immediately with all provisions of this code except Sections 4D(2), 4D(3) and 4E and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of one year.

CONSTITUTIONAL PROVISIONS

Article 6.1 of the Arizona Constitution is the governing law for the Commission on Judicial Conduct and was approved by the electorate in November 1970. Minor changes were made to this section of the constitution in 1976, and substantial revisions were adopted in 1988. The following is the complete text of the article.

1. Composition: appointment; term; vacancies

Section 1. A. A commission on judicial conduct is created to be composed of eleven persons consisting of two judges of the court of appeals, two judges of the superior court, one justice of the peace and one municipal court judge, who shall be appointed by the supreme court, two members of the state bar of Arizona, who shall be appointed by the governing body of such bar association, and three citizens who are not judges, retired judges nor members of the state bar of Arizona, who shall be appointed by the governor subject to confirmation by the senate in the manner prescribed by law.

B. Terms of members of the commission shall be six years, except that initial terms of two members appointed by the supreme court and one member appointed by the state bar of Arizona for terms which begin in January, 1991 shall be for two years and initial terms of one member appointed by the supreme court and one member appointed by the state bar of Arizona for terms which begin in January, 1991 shall be for four years. If a member ceases to hold the position that qualified him for appointment his membership on the commission terminates. An appointment to fill a vacancy for an unexpired term shall be made for the remainder of the term by the appointing power of the original appointment. *Added, election Nov. 3 1970; amended, election Nov. 2, 1976, eff. Nov. 22, 1976; election Nov. 8, 1988, eff. Dec. 5, 1988.*

2. Disqualification of judge

Section 2. A judge is disqualified from acting as a judge, without loss of salary, while there is pending an indictment or an information charging him in the United States with a crime punishable as a felony under Arizona or federal law, or a recommendation to the supreme court by the commission on judicial conduct for his suspension, removal or retirement. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, eff. Dec. 5, 1988.*

3. Suspension or removal of judge

Section 3. On recommendation of the commission on judicial conduct, or on its own motion, the supreme court may suspend a judge from office without salary when, in the United States, he pleads guilty or no contest or is found guilty of a crime punishable as a felony

under Arizona or federal law or of any other crime that involves moral turpitude under such law. If his conviction is reversed the suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the supreme court shall remove him from office. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, eff. Dec. 5, 1988.*

4. Retirement of judge

Section 4. A. On recommendation of the commission on judicial conduct, the supreme court may retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and may censure, suspend without pay or remove a judge for action by him that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

B. A judge retired by the supreme court shall be considered to have retired voluntarily. A judge removed by the supreme court is ineligible for judicial office in this state. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, Dec. 5, 1988.*

5. Definitions and rules implementing article

Section 5. The term "judge" as used in this article shall apply to all justices of the peace, judges in courts inferior to the superior court as may be provided by law, judges of the superior court, judges of the court of appeals and justices of the supreme court. The supreme court shall make rules implementing this article and providing for confidentiality of proceedings. A judge who is a member of the commission or supreme court shall not participate as a member in any proceedings hereunder involving his own censure, suspension, removal or involuntary retirement. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, eff. Dec. 5, 1988.*

6. Article self-executing

Section 6. The provisions of this article shall be self-executing. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970.*

RULES OF THE COMMISSION ON JUDICIAL CONDUCT

Amended June 9, 2005, and January 20, 2006; effective January 20, 2006

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An independent, fair, and competent judiciary being one of the cornerstones of our legal system, judges must respect and honor their judicial office as a public trust. To preserve the integrity of the judiciary and to enhance public confidence in the judicial system, Arizona regulates judicial conduct through a system comprised of the Arizona Supreme Court and the Commission on Judicial Conduct, which is established by article 6.1 of the Arizona Constitution. By law, the supreme court is responsible for approving the commission's rules and reviewing recommendations for the censure, suspension, removal, or retirement of a judge. The supreme court is also responsible for adopting the Code of Judicial Conduct, which contains the standards governing the ethical conduct of judges. The commission is responsible for administering the judicial discipline and incapacity system over all state and local judges.

TERMINOLOGY

The following terms have specific meanings within the context of these rules:

"Censure" is a formal public sanction based on a finding that a judge has clearly committed misconduct but the conduct is not so egregious as to warrant suspension, removal or retirement.

"Code" means the Code of Judicial Conduct adopted by the supreme court.

"Complaint" means information in any form from any source received by the commission that alleges or implies judicial misconduct or incapacity.

"Complainant" means a person or organization that initially files a complaint regarding the conduct of a judge. The complainant is not a party to the proceeding.

"Constitution" means the Arizona Constitution.

"Disciplinary counsel" means an attorney responsible for investigating complaints, presenting information to an investigative panel, and prosecuting charges in a formal disciplinary proceeding before a hearing panel, a hearing officer, or the supreme court.

"Executive director" denotes the chief administrator for the commission.

"Formal charges" denotes the document setting forth specific acts of judicial misconduct or incapacity, including any amendment thereto, authorized by an investigative panel upon a determination of reasonable cause.

“Hearing” means a public proceeding at which issues of fact and law raised in the formal charges are tried before a hearing panel or a hearing officer.

“Hearing officer” denotes a person appointed by the commission to perform the functions of a hearing panel, including making proposed recommendations, when circumstances dictate that an appropriate hearing panel cannot be constituted, or when the hearing panel is unable to complete this process within the intent of the rules.

“Hearing panel” denotes the commission members appointed by the chairperson to conduct a hearing.

“Incapacity” is a mental or physical condition that adversely affects a judge’s ability to perform judicial functions. Incapacity is distinguished from a disability in that a disability does not necessarily adversely affect a judge’s performance of judicial functions.

“Investigative panel” denotes three commission members appointed by the chairperson to review the complaint and evidence to determine if reasonable cause exists to file formal charges against a judge.

“Judge” refers to anyone, whether or not a lawyer, who is or was an officer of the judicial branch of government subject to the code, including judges pro tempore, court commissioners, hearing officers, special masters, and referees.

“Misconduct” means any conduct by a judge constituting grounds for discipline.

“Presiding member” is the person designated by the chairperson to perform the duties of a presiding officer on a commission panel.

“Proceedings” denotes all steps in the discipline and incapacity system set forth in these rules.

“Public member” means a member of the commission who has never been a judge or an attorney.

“Reasonable Cause” is the equivalent of probable cause and means a reasonable ground for belief in the existence of facts warranting the filing of formal charges.

“Recommendations” denotes the written findings of fact, conclusions of law, and recom-

mendations filed with the commission or the supreme court at the conclusion of a formal hearing.

“Record” means the complaint, the judge’s response, the commission’s findings, if any, and the final dispositional order in a case involving informal proceedings, and all documents filed in a case involving formal proceedings beginning with the notice and statement of formal charges, including the transcript of the hearing if recommendations are filed with the supreme court.

“Reprimand” is an informal public sanction imposed for minor misconduct that does not warrant censure, suspension, removal, or retirement.

“Supreme court” is the Supreme Court of Arizona.

SECTION A.

ORGANIZATION AND ADMINISTRATION

RULE 1. SCOPE OF AUTHORITY

The disciplinary authority of the commission extends to every judge and judicial officer subject to article 6.1 of the constitution and the code.

RULE 2. PURPOSE AND JURISDICTION

The purpose of the commission is to administer the judicial discipline and incapacity system established by the constitution. The commission has jurisdiction over judges and former judges concerning allegations of misconduct occurring prior to or during service as a judge and allegations of incapacity during service as a judge.

RULE 3. ORGANIZATION

(a) Members. The commission is comprised of eleven members appointed to staggered, six-year terms in specific categories as provided in article 6.1, § 1 of the constitution. Membership shall terminate if a member ceases to hold the position that qualified him or her for appointment. An appointment to fill a vacancy for an unexpired term shall be made in the same manner as provided for an original appointment.

(b) Officers. The members of the commission shall elect a chairperson, a vice-chairperson, and a secretary, each of whom may serve successive two-year terms. If an officer resigns or ceases to be a member of the commission, the commission shall elect another member to fill the remaining term of the vacated office.

(c) Duties of officers. The chairperson shall perform the duties normally associated with the office and shall preside over all general meetings of the full commission. The vice-chairperson shall act as chairperson in the absence of the chairperson. In the absence of both the chairperson and vice-chairperson, the members present at the meeting shall select an acting chairperson. The secretary, assisted by the executive

director, shall keep the permanent minutes of commission meetings. The chairperson may appoint an acting secretary in the absence or inability of the secretary to perform these duties.

(d) Quorum. A majority of the members shall constitute a quorum for business transacted before the full commission. Three members shall constitute a quorum for an investigative panel and six members shall constitute a quorum for a hearing panel, providing that both panels shall include at least one public member.

(e) Meetings. The chairperson or any three members may call a meeting of the full commission and designate when and where the meeting shall be held. The chairperson or executive director shall notify each member of the time and place of any meeting.

(f) Panels. When necessary under these rules, the chairperson shall divide the commission into an investigative panel of three members and a hearing panel of eight members, and shall designate a member to preside over each panel. Whenever possible panels shall include members from each category of membership (judges, attorneys, and public members), and shall meet at the direction of the presiding member. No member who sits on an investigative panel during a particular case may sit on a hearing panel for the same case.

(g) Expenses. Commission members shall not be compensated for their services, but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

(h) Disqualification. A member of the commission shall disqualify himself or herself in any matter in which disqualification would be required of a judge under the code.

(i) Complaints against judicial members. If a complaint is filed against a judicial member of the commission, that member shall not participate in the investigation or adjudication of the matter.

RULE 4. ADMINISTRATION

(a) Appointment of staff. The commission may employ an executive director, disciplinary counsel, and such other staff as it deems necessary to assist the commission in performing its duties. Commission staff shall serve at the pleasure of the commission.

(b) Duties of executive director. The executive director is the chief administrative officer of the commission and is responsible for considering allegations of judicial misconduct from any source, screening complaints, and aiding as necessary in the investigation of complaints. The executive director shall supervise commission staff, prepare reports, accept service on behalf of the commission, administer appropriations and other

funds in cooperation with the Administrative Director of the Courts, maintain records and files, and perform other duties as directed by the commission.

(c) Duties of disciplinary counsel. Disciplinary counsel shall conduct preliminary investigations and perform the functions of a prosecutor in proceedings before investigative panels, hearing panels or hearing officers, and the supreme court. Disciplinary counsel shall file formal charges when directed to do so by the commission or an investigative panel, and shall perform other duties as directed by the commission.

(d) Policies, procedures and forms. The commission may adopt administrative policies and forms that do not conflict with these rules.

SECTION B. GENERAL PROVISIONS

RULE 5. PURPOSE OF JUDICIAL DISCIPLINE

The purpose of the judicial discipline and incapacity system is not to punish the judge, but to protect the public and to maintain high standards for the judiciary and the administration of justice. Any disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future.

RULE 6. GROUNDS FOR DISCIPLINE

The grounds for judicial discipline include willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code.

RULE 7. MISCONDUCT DISTINGUISHED FROM ERROR

The commission shall not take action against a judge for making erroneous findings of fact or conclusions of law in the absence of fraud, corrupt motive, or bad faith on the judge's part, unless such findings or conclusions constitute such an abuse of discretion as to otherwise violate one of the grounds for discipline described in these rules or the code.

RULE 8. RIGHT TO COUNSEL

A judge is entitled to due process, including, but not limited to, the right to defend against the charges and to be represented by counsel at his or her own expense.

RULE 9. PUBLIC ACCESS AND CONFIDENTIALITY

(a) Public access. The record in informal proceedings shall be public after the complainant and the judge are notified of the outcome of the proceedings and the

time provided for further commission review has expired. The record in formal proceedings shall be public after the filing of the judge's response to formal charges or the expiration of the time provided for such a response, the entry of an order approving an agreement for discipline by consent, or the waiver of confidentiality by the judge.

(b) Confidential matters. All other commission correspondence, draft documents, computer records, investigative reports, attorney work product, commission deliberations, and records in dismissed cases are confidential; provided that, following entry of an order of dismissal, the complaint and the order of dismissal shall be made public but with all identifying information regarding any person or court redacted and the judge and complainant designated only by number.

(c) Discretionary disclosure. The commission may disclose a complaint to a judge and a judge's response to a complainant at any time. It may also disclose confidential information to confirm a pending investigation in a case in which an investigation has become public or to clarify proceedings in such a case; to protect individuals, the public, or the administration of justice; and to comply with official requests from agencies and other organizations involved in criminal prosecutions, bar discipline investigations, or judicial nomination, selection, and retention proceedings. Unless otherwise ordered by the commission, complainants, respondent judges and witnesses are not prohibited from disclosing the existence of proceedings or from disclosing any documents or correspondence served on or provided to those persons.

(d) Protective orders. Upon motion by a party or by a person from whom the information was obtained, or by disciplinary counsel, and for good cause shown, the commission, an investigative panel, a hearing panel or a hearing officer may make an order sealing a portion of the record. Sealed materials shall be opened and viewed only by the commission or one of its corresponding panels, a hearing officer, disciplinary counsel or the supreme court. The information shall not otherwise be disclosed unless the parties and the person providing the information are given notice and an opportunity to be heard.

RULE 10. NOTIFICATION TO COMPLAINANT

Commission staff shall provide written acknowledgment of every complaint, if the complainant is known, and notify the complainant in writing of a public hearing, if any, and of the final disposition of the complaint.

RULE 11. ADMINISTRATION OF OATHS

Each member of the commission or its staff, and any hearing officer appointed under these rules, shall have the power to administer oaths for taking testimony on

matters within the jurisdiction of the commission. Witnesses shall be sworn upon oath or affirmation to tell the truth and, prior to the initiation of formal proceedings, may be sworn not to disclose the existence of the investigation or the identity of the judge until the proceeding is no longer confidential under the rules.

RULE 12. SERVICE

Service upon a judge of formal charges in any disciplinary or incapacity proceeding shall be made by personal service upon the judge or judge's counsel by any person authorized by the commission chairperson, or by certified mail, return receipt requested, to the judge's address of record. Delivery of all other papers or notices, including a request for a response to a complaint, shall be made by first class mail unless otherwise ordered by the commission.

RULE 13. SUBPOENA POWER

(a) Subpoenas. In conformance with the applicable rules of civil procedure, presiding panel members, hearing officers, and their designees, on their own motion or at the request of a party, may issue subpoenas compelling the attendance of the judge or witnesses and the production of pertinent books, papers, and documents for the purposes of investigation, depositions, and formal hearings. Subpoenas issued during investigations prior to the institution of formal proceedings shall indicate that they are issued in connection with a confidential investigation.

(b) Enforcement. Upon proper application, the superior court in any county in which the attendance of a witness or production of documents is required shall enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(c) Witness fees. Subpoena fees and costs shall be the same as those provided for in proceedings in the superior court.

RULE 14. PROHIBITION AGAINST RETALIATION

A judge against whom a complaint is filed shall not directly or indirectly engage in any act of retaliation against any person who files a complaint, cooperates in the investigation of a complaint, or acts as a witness in any proceeding brought against the judge. "Retaliation" includes, but is not limited to, the act of dismissing or procuring the dismissal, without reasonable cause, of a member of the judge's staff or other person subject to the judge's direction and control, creating a hostile or offensive working environment for such person, or filing a frivolous bar complaint against an attorney who is a complainant or witness. The commission or disciplinary counsel may, at any time, file a petition with the supreme court for an order prohibiting, at the risk of sanctions for contempt, conduct of a judge that is or appears to be retaliatory in nature.

RULE 15. IMMUNITY FROM CIVIL SUIT

Communications with the supreme court, the court's staff, the commission, or commission staff relating to judicial misconduct or incapacity and testimony given in any proceedings before the commission, a panel thereof, or a hearing officer shall be absolutely privileged as provided by law. No civil action may be instituted against any complainant or witness on the basis of these privileged communications. Members of the commission, commission staff, hearing officers, and court staff shall be immune from suit for any conduct in the course of their official duties.

SECTION C. DISPOSITIONS AND SANCTIONS

RULE 16. DISPOSITIONS IN GENERAL

(a) Dismissal. The commission may dismiss a complaint that fails to allege an act of judicial misconduct, that lacks sufficient evidence to support an investigation, that is solely appellate in nature, or that is otherwise frivolous, unfounded or outside its jurisdiction. A dismissal may be issued with confidential comments reminding a judge of ethical obligations or recommending changes in behavior or procedures.

(b) Additional forms of discipline. If the commission finds an act of judicial misconduct, in addition to any other sanction or sanctions imposed, the commission may direct a judge to participate in professional counseling, judicial education, mentoring, or other similar activities.

(c) Consultation. The commission may confer confidentially with a judge at any time to discuss disciplinary alternatives including voluntary retirement or resignation from judicial office. If a judge agrees to retire or resign while a complaint is pending, the commission may dismiss the complaint or take other appropriate action consistent with these rules.

(d) Discipline by contracting authority. The commission may recommend to the chief justice, a chief judge, or a presiding judge of any court that a judicial officer hired under contract be disciplined directly by the contracting authority.

RULE 17. INFORMAL SANCTIONS

(a) Reprimand. The commission may reprimand a judge without a formal hearing for conduct that is unacceptable under one of the grounds for judicial discipline, but that is not so serious as to warrant formal proceedings or further discipline by the supreme court.

(b) Other informal sanctions. The commission may take any other informal action consistent with these rules, including, but not limited to, the assessment of attorney fees and costs.

RULE 18. FORMAL SANCTIONS

(a) Censure, suspension, or removal. The commission may recommend to the supreme court, pursuant to article 6.1, § 4 of the constitution, that a judge be censured, suspended without pay, or removed from office for misconduct following a formal hearing or the approval of an agreement for discipline by consent.

(b) Involuntary retirement. The commission may recommend to the supreme court, pursuant to article 6.1, § 4 of the constitution, that a judge be involuntarily retired for a mental or physical incapacity that seriously interferes with the performance of the judge's duties and is likely to become permanent following an incapacity proceeding or the approval of an agreement for discipline by consent.

(c) Immediate disqualification. A judge shall be disqualified, without loss of salary, pursuant to article 6.1, § 2 of the constitution, from acting as a judge when the commission files a recommendation to the supreme court for the judge's suspension, removal, or retirement.

(d) Criminal conduct. The commission may recommend to the supreme court, pursuant to article 6.1, § 3 of the constitution, that a judge be suspended from office without salary when the judge pleads guilty or no contest to, or is found guilty of, a crime punishable as a felony under state or federal law or of any other crime that involves moral turpitude under such law. The supreme court may also act on its own motion under this section.

(e) Other formal sanctions. The commission may recommend the imposition of other formal sanctions consistent with these rules, including, but not limited to, the assessment of attorney fees and costs.

RULE 19. MITIGATING AND AGGRAVATING FACTORS

The following nonexclusive factors may be considered in determining appropriate disciplinary action:

(a) the nature, extent, and frequency of the misconduct;

(b) the judge's experience and length of service on the bench;

(c) whether the conduct occurred in the judge's official capacity or private life;

(d) the nature and extent to which the acts of misconduct injured other persons or respect for the judiciary;

(e) whether and to what extent the judge exploited his or her position for improper purposes;

(f) whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct;

(g) whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding;

(h) whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion;

(i) whether the judge cooperated fully and honestly with the commission in the proceeding; and

(j) whether the judge was suffering from personal or emotional problems or from physical or mental disability or impairment at the time of the misconduct.

SECTION D.

DISCIPLINARY PROCEEDINGS

RULE 20. COMMENCEMENT

The commission shall commence an investigation upon receiving a written complaint alleging facts of judicial misconduct or incapacity and may otherwise do so upon its own motion. If a written complaint is not filed, the commission's written statement of allegations constitutes the complaint.

RULE 21. INITIAL SCREENING

The executive director shall conduct an initial screening to determine whether a complaint warrants investigation and evaluation. A complaint that is frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the commission shall be dismissed subject to review by the commission at its next scheduled meeting. A complaint that is not dismissed shall be referred to disciplinary counsel for further investigation.

RULE 22. INVESTIGATION

(a) **Preliminary investigation.** Disciplinary counsel shall conduct a preliminary investigation of a complaint that is not dismissed during initial screening. If, after preliminary investigation of a complaint, disciplinary counsel recommends dismissal or imposition of informal sanctions, the investigative findings and recommendation shall be reported to the commission.

(b) **Request for response from judge.** As part of the preliminary investigation, the judge may be notified of the substance of the complaint and afforded a reasonable opportunity to respond. The commission shall not impose informal sanctions or initiate formal proceedings without first having provided such notice and opportunity.

(c) **Appointment of investigative panel.** If, after consultation with the executive director, disciplinary counsel determines that a full investigation may be required to resolve a complaint or that sufficient evidence may already exist to support formal charges against a judge, a three-member investigative panel shall be appointed as provided in Rule 3(f).

(d) **Full investigation.** The investigative panel shall review the findings of the preliminary investigation and may authorize disciplinary counsel to conduct a full investigation if there are grounds to believe that evidence supporting the allegations may be obtained by subpoena or further investigation.

(e) **Use of information from closed cases.** Unless otherwise prohibited, information in a closed file may be used during an investigation or any subsequent proceeding to show a pattern of misconduct, to determine the severity of the sanction, or to exonerate a judge, providing that the existence of the file is disclosed prior to the commencement of formal proceedings and the judge is permitted to raise issues pertaining to prior conduct in the proceedings. A complaint previously dismissed may be reopened if additional information regarding the complaint comes to light and is disclosed to the judge.

(f) **Finding of reasonable cause.** At the conclusion of a full investigation, the investigative panel may instruct disciplinary counsel to prepare formal charges if it finds reasonable cause to believe that one or more grounds for discipline of a judge exists that cannot be resolved through dismissal or informal sanctions. In all other cases, the investigative panel shall refer the matter to the full commission for final disposition.

RULE 23. COMMISSION REVIEW

(a) **Disposition.** After reviewing a complaint, the report of the executive director or disciplinary counsel, or the recommendation of an investigative panel, the commission may dismiss the complaint or impose an informal sanction consistent with these rules.

(b) **Motion for reconsideration.** Within fifteen days of the mailing of an order, the judge or the complainant may file a motion for reconsideration, which may include a request to appear before the commission. No response to the motion is required unless requested by the commission. The commission shall promptly notify the judge and the complainant of its decision.

(c) **Request for formal hearing.** In addition or as an alternative to filing a motion for reconsideration, the judge may, within fifteen days of the mailing of an order, file a request for a hearing conducted pursuant to Rule 27(f).

RULE 24. FORMAL CHARGES

(a) **Formal charges.** After the investigative panel finds reasonable cause to proceed, disciplinary counsel shall prepare a statement of formal charges for the purpose of giving the judge full and fair notice of the allegations. Disciplinary counsel shall file the formal charges in the office of the commission.

(b) Notice. The formal charges shall be served upon the judge, along with a notice of formal proceedings prepared by the executive director. The notice shall advise the judge of the charges, the right to be represented by counsel, and the right to file a written response within fifteen days after service.

(c) Amendments. Before the commencement of the formal hearing, amendments to the formal charges or response may be allowed for good cause. During or after the formal hearing, and pursuant to motion, the formal charges may be amended to conform to the evidence.

RULE 25. RESPONSE

(a) Response. Within fifteen days after service of the formal charges and notice of formal proceedings, the judge may file a response in the office of the commission. The executive director shall promptly prepare copies of the response for distribution to disciplinary counsel and members of the hearing panel.

(b) Waiver of privilege. The raising of a mental or physical condition as a defense constitutes a waiver of medical privilege as to the particular condition at issue.

(c) Extension of time. For good cause shown, the presiding member may grant an extension of time to file a response to the formal charges.

(d) Failure to respond. In the event a judge fails to respond within the prescribed time, the factual allegations in the formal charges shall be deemed admitted.

RULE 26. DISCOVERY

(a) Witnesses. Within twenty days of the filing of a response, disciplinary counsel and the judge shall exchange the names and addresses of all persons known to have knowledge of the relevant facts, designating those persons the parties intend to call at the hearing. A party may withhold such information only with permission of the presiding member of the hearing panel (or his or her designee) or the hearing officer, and only for good cause shown. Review of the withholding request shall be in camera, but the requesting party shall advise the other party of the existence of the request.

(b) Other evidence. The parties shall exchange evidence relevant to the charges that is not otherwise confidential. Confidential information may be discoverable only upon good cause shown.

(c) Exculpatory evidence. Disciplinary counsel shall provide the judge with exculpatory evidence relevant to the charges that directly negates the allegations. Exculpatory evidence, for the purposes of disciplinary proceedings, is not evidence of otherwise expected judicial conduct.

(d) Duty of supplementation. The parties have a continuing duty to supplement information required to be exchanged under this rule.

(e) Completion of discovery. To the extent practicable, all discovery shall be completed within forty-five days after the filing of the response or fifteen days before the hearing, whichever is longer.

(f) Failure to disclose. The hearing panel or hearing officer may preclude any party from calling a witness or presenting evidence at the hearing if the witness or evidence has not been disclosed.

(g) Resolution of discovery disputes. The presiding member of the hearing panel or the hearing officer shall resolve all discovery disputes. These rulings shall be final, except on review.

RULE 27. HEARINGS

(a) Appointment of hearing panel. Formal proceedings shall be conducted before a hearing panel consisting of the members of the commission who were not appointed to the investigative panel assigned to review the case.

(b) Duties of presiding member. The presiding member of the hearing panel shall oversee all pre-hearing proceedings, rule on pre-hearing motions, and preside over the formal hearing. To facilitate the prompt and timely resolution of the case, the presiding member shall prepare a case management order setting forth a schedule and deadlines for each stage of the proceedings, and may order a settlement conference, review discovery procedures with the parties, rule on pre-hearing motions, and conduct pre-hearing conferences to obtain admissions or narrow the issues presented by the pleadings.

(c) Use of hearing officer. If a hearing panel is unable to function within the intent of these rules, the commission shall appoint a hearing officer or a panel of three hearing officers to perform the functions of the hearing panel as set forth in these rules. If a panel of hearing officers is appointed, the composition of the panel shall, if feasible, reflect the membership categories of the commission.

(d) Notice of hearing. The presiding member of the hearing panel or the hearing officer, if one has been appointed pursuant to paragraph (b), shall designate the time and place of the hearing and shall give the judge at least fifteen days' notice thereof.

(e) Settlement conference. At anytime prior to the hearing, the presiding member of the hearing panel may order the parties to participate in a settlement conference conducted by a member of the investigative panel. Any proposed agreement for discipline by consent shall conform with the requirements of Rule 30.

(f) Conduct of hearing. The following rules shall apply to hearings:

(1) Findings of fact shall be based on clear and convincing evidence as that term has been defined by the supreme court.

(2) The Arizona Rules of Evidence shall apply as far as practicable in all commission proceedings, and Rule 122 of the Rules of the Supreme Court shall apply to all requests for electronic and photographic coverage of such proceedings.

(3) Procedural errors or defects not affecting the substantive rights of a judge shall not be grounds for invalidation of commission proceedings.

(4) All testimony shall be under oath.

(5) The judge may be called as a witness.

(6) The parties may present evidence and produce and cross-examine witnesses.

(7) The parties may recommend and argue for a discipline appropriate to the misconduct supported by the evidence, including argument on aggravating and mitigating factors.

(8) The panel or hearing officer may instruct the parties to submit proposed findings, conclusions, and recommendations for discipline or order of dismissal to the hearing panel.

(9) The hearing shall be transcribed by a court reporter or electronically recorded for use by the supreme court, and a transcript shall be filed with the commission's recommendations. Any party may obtain a copy of the transcript at his or her own expense.

(10) Where a member of a hearing panel has not heard the evidence, that member shall not participate in any deliberations or decisions unless he or she has personally considered the whole record, including any recording or transcript from portions of the hearing from which that member was absent.

(g) Ex parte communications. Members of an investigative panel, commission staff, disciplinary counsel, the complainant, the judge, and the judge's counsel shall not engage in improper ex parte communications, as defined in Canon 3B(7) of the code, with members of a hearing panel or a hearing officer as to the merits of a case in which the investigative panel has been involved.

(h) Failure to appear. If the judge fails to appear at the hearing, either in person or through counsel, he or she shall be deemed to have admitted the factual allegations that were to be the subject of such appearance and to have conceded the merits of any motion or recommendations to be considered at such appearance. Absent good cause, the proceedings shall not be continued or delayed based on the judge's failure to appear.

RULE 28. RECOMMENDATIONS

(a) By a hearing panel. The hearing panel may file proposed recommendations at any time after the conclusion of the formal hearing and shall do so no later than fifteen days after the transcript of the hearing is filed with the commission. The recommendations shall be served on both parties, and either party may file a motion for reconsideration within ten business days. The motion shall be limited to whether the evidence in the record supports the findings of fact. If a motion is filed, the adverse party may file a response within ten business days, and no reply shall be filed unless ordered by the hearing panel. The hearing panel may accept or reject any objections to the factual findings without further proceedings.

(b) By a hearing officer. The hearing officer may file proposed recommendations at any time after the conclusion of the formal hearing and shall do so no later than fifteen days after the transcript of the hearing is filed with the commission. Commission members who have not previously participated in the investigation shall review the findings of fact based on a clearly erroneous standard and the conclusions of law on a de novo basis. The commission so constituted may thereafter adopt, reject, or modify the proposed recommendations. The recommendations shall be served on both parties, and either party may file a motion for reconsideration within ten business days. The motion shall be limited to whether the evidence in the record supports the findings of fact. If a motion is filed, the adverse party may file a response within ten business days, and no reply shall be filed unless ordered by the commission. The commission may accept or reject any objections to the factual findings without further proceedings.

(c) Filing and notice to judge. Recommendations for formal sanctions shall be filed with the clerk of the supreme court and are subject to review in accordance with Rule 29. Recommendations for informal sanctions shall be filed with the commission and are not subject to review by the supreme court. In either case, a copy of the recommendations and notice of the filing shall be promptly served upon the judge and the complainant.

RULE 29. SUPREME COURT REVIEW

(a) Finality of recommendations. A recommendation of censure shall be final unless the judge or disciplinary counsel files a petition to modify or reject the recommendation as provided in paragraph (c). All other recommendations for formal sanctions are subject to review by the supreme court, either by petition or on the court's own motion.

(b) Expedited consideration. Either the judge or disciplinary counsel may petition the supreme court at any time for expedited consideration of a matter.

(c) Petition to modify or reject recommendations. Within fifteen days after the filing of the final recommendations, the judge may file in the supreme court a petition to modify or reject the recommendations, setting forth the grounds. A request for oral argument may also be filed at this time. A copy of the petition shall be served on disciplinary counsel. Within fifteen days of service of the petition, disciplinary counsel may file and serve such response as he or she deems appropriate. No reply to the response is permitted unless requested by the court. All factual argument in these pleadings shall be limited to the record, except as to judicially noticeable material.

(d) Review on court's own motion. If the judge does not file a timely petition to modify or reject recommendations, and the commission has recommended suspension, removal, or retirement from office, within thirty days after the expiration of the time to file a petition to modify or reject recommendations the court may decline review, or it may grant review on its own motion. If the court grants review, the record shall be transmitted to the clerk.

(e) Submission to the court. After the filing of a petition to modify or reject final recommendations and the response thereto, or on the court's own motion, the record shall be transmitted to the clerk of the supreme court. If no timely request for oral argument has been made, the matter shall be deemed submitted to the supreme court for its decision.

(f) Proposed form of order for interim suspension. In the event suspension, removal, or retirement from office is recommended, a proposed form of order shall be filed with the recommendations that gives notice to the judge of the interim suspension required by article 6.1, § 2 of the constitution. After the order has been signed by the chief justice, the executive director shall promptly notify the presiding judge of the court in which the judge sits of the issuance of the order.

(g) Entry of judgment. If the judge does not file a timely petition to modify or reject recommendations, the executive director shall file in the supreme court a form of judgment for signature by the clerk of the court. In the case of a recommendation of censure, the clerk shall expeditiously sign and enter the judgment. In the case of a recommendation of suspension, removal, or retirement from office, the clerk shall expeditiously sign and enter the judgment after entry of the court's order declining review pursuant to paragraph (d) of this rule.

(h) Final determination. The judgment of the supreme court dismissing the case or imposing a sanction shall be regarded as final and shall be effective on the date the judgment or opinion is filed with the clerk of the court.

SECTION E. SPECIAL PROCEEDINGS

RULE 30. DISCIPLINE BY CONSENT

(a) Agreement. At any time prior to the final disposition of a proceeding, a judge may stipulate to any or all of the allegations or charges in exchange for an agreed upon sanction. The agreement shall set forth all material facts relating to the proceeding and the conduct of the judge and shall be signed by the judge and disciplinary counsel.

(b) Approval. The agreement shall be submitted for approval to the hearing panel or hearing officer, as appropriate. If the agreement is accepted, an order shall be entered approving the agreement, subject to review as appropriate under these rules. If the agreement is rejected, it shall be deemed withdrawn and cannot be used by or against the judge in any proceeding.

(c) Modification. If the hearing panel or hearing officer wishes to modify the agreement, the parties shall be notified in writing of the nature and substance of the proposed modifications. Within fifteen days or such reasonable time as the hearing panel or hearing officer orders, the parties may approve or reject the proposed modifications. If any party does not accept the proposed modifications, the agreement shall be withdrawn and cannot be used by or against the judge in any proceeding.

RULE 31. INTERIM REASSIGNMENT

At any time after the institution of a preliminary investigation, when it appears that a judge poses a substantial threat of serious harm to the public or the administration of justice, the investigative panel may recommend to the chief justice of the supreme court that the judge be reassigned pending a final determination of any proceeding under these rules. The panel's recommendation shall be filed with the clerk of the court and served on the judge, who may file objections to the recommendation. The chief justice's ruling on the recommendation shall continue in effect until final disposition of all pending proceedings against the judge, unless earlier vacated or modified.

RULE 32. MEDICAL EXAMINATION

(a) Authority to order. After the institution of a preliminary investigation and before the filing of a notice of formal proceedings, an investigative panel may order a judge, at the commission's expense, to submit to a physical or mental examination by one or more licensed physicians or psychologists appointed by the investigative panel to conduct such an examination.

(b) Use of examination results. The medical practitioners shall examine the judge to determine the judge's mental or physical condition to hold judicial

office. The examination may include any laboratory and other tests deemed necessary by the examining medical practitioners. The results of the examinations and tests shall be reported in writing to the investigative panel and copies shall be furnished to the judge, the judge's counsel, or guardian ad litem. These medical reports may be reviewed by an investigative panel in connection with a finding of reasonable cause or may be received in evidence in any subsequent hearing.

(c) Failure or refusal to be examined. The failure or refusal of a judge to submit to a medical examination ordered by the investigative panel shall preclude the judge from presenting evidence of the results of medical examinations done on the judge's behalf. An investigative or hearing panel may consider such a refusal or failure as evidence that the judge has an incapacity that seriously interferes with the performance of judicial duties and is or is likely to become permanent.

RULE 33. INCAPACITY PROCEEDINGS

(a) Initiation of proceeding. An incapacity proceeding may be initiated by a complaint, by a claim of inability to defend in a disciplinary proceeding, or by an order of involuntary commitment or adjudication of incompetency.

(b) Conduct of proceeding. All incapacity proceedings shall be conducted in accordance with the procedures for disciplinary proceedings, except that the purpose of the incapacity proceedings shall be to determine whether the judge suffers from an incapacity that is permanent or likely to become permanent and that seriously interferes with the judge's ability to perform judicial duties. If the commission concludes that the judge suffers from an incapacity, it shall recommend retirement of the judge. Review of the recommendation and entry of judgment shall be pursuant to Rule 29. Raising a mental or physical condition as a defense to or in mitigation of formal charges constitutes a waiver of medical privilege as to the particular condition at issue.

(c) Appointment of guardian ad litem. If it appears to the commission at any time during the proceedings that the judge is not competent to defend himself or herself, the commission may appoint a guardian ad litem for the judge. The guardian ad litem may exercise any right and make any defense for the judge with the same force and effect as if exercised or made by the judge, if competent. Whenever these rules provide for serving notice to a judge, the notice shall be served to the guardian ad litem.

RULE 34. COMPLIANCE PROCEEDINGS

(a) Compliance procedure. Whenever the commission or supreme court enters an order of discipline that includes terms and conditions prescribing behavior or requiring a corrective course of action by the judge, commission staff shall investigate, evaluate, and report on compliance with the order. If the commission has reason to believe that further disciplinary action is appropriate, the commission may reopen any suspended matter, hold additional hearings, or initiate further proceedings consistent with these rules.

(b) Certificate of compliance. Upon completion of a course of action prescribed by the commission, the judge may submit an application for a certificate of compliance and such other information in support of the application as the judge deems appropriate. The commission shall consider the application and supporting material and may find that the judge has complied with or satisfied the terms and conditions of the disciplinary order. If the commission finds the application persuasive, it may dispense with further compliance proceedings and may issue a certificate or order certifying the judge's compliance with the disciplinary order. Alternatively, the commission may deny the application and may recommend to the supreme court, with or without an additional hearing, further disciplinary action consistent with these rules.

(c) Other powers. This rule does not limit any other power to enforce an order of the commission or decision of the supreme court.

SUMMARIES OF MAJOR CASES

Judicial discipline cases decided by the Arizona Supreme Court provide guidelines for interpreting the Code of Judicial Conduct. The summaries contained in this section include legal citations showing where to find the full text of the court's opinions. Summaries of unpublished orders, the originals of which are kept on file by the clerk of the court, include case numbers and filing dates, but no legal citations. Opinions are listed chronologically.

The commission recommended that a justice of the peace be removed from office for failing to properly dispose of several hundred traffic cases over a six-year period and for engaging in an angry confrontation with an attorney seeking to have his case heard. After the commission filed its recommendations with the supreme court and before the court could rule on the case, the judge resigned and entered into a stipulated agreement that enjoined him from seeking election or appointment as a judge in Arizona. ***In re Avalos***, JUD-2 (June 26, 1980).

A justice of the peace abused his position when he sentenced defendants in a case in which he was the complaining party; ordered the arrest of a court reporter and had her transported to the court where he ordered her to function as the court reporter in a criminal proceeding; issued an "investigative subpoena" for a friend to appear in court without making an official record or allowing the prosecutor, bailiff or court clerk to be present; set bail in a case, without conducting or offering a hearing, based upon the judge's personal acquaintance with the defendants; and used a red light in his personal vehicle to stop a car involved in an accident, effectuated the arrest of the driver, and subsequently conducted the defendant's preliminary hearing. The judge resigned just before the commission filed its recommendations with the supreme court. ***In re Soto***, JUD-3 (September 26, 1980).

A justice of the peace was publicly censured for summarily dismissing the traffic citations of constituents and for filing civil actions on his own behalf in his court. The supreme court found that the judge's practice of favoring constituents over others was improper. The court also concluded that a justice of the peace with outside business interests had to make a choice either to leave the bench, in which case he would have the same advantage as other residents in the community, or divest himself of his business interests, thereby insuring the independence and integrity of the judiciary. ***In re Haddad***, 128 Ariz. 490, 627 P.2d 221 (1981).

A justice of the peace was censured by the supreme court for delaying decisions in several cases past the sixty-day statutory period. The judge signed salary affi-

davits stating that he had no matters under advisement in excess of the sixty-day period. The court held that the unnecessary and unwarranted delay in the rendering of decisions violated the state constitution which provides for the removal or censure of a judge for wilful and persistent failure to perform judicial duties. Although the judge resigned before the decision was entered, the court still exercised jurisdiction by reasoning that the potential existed for the judge to run for office again. ***In re Weeks***, 134 Ariz. 521, 658 P.2d 174 (1983).

A justice of the peace was publicly censured for giving a false report to the commission and for questioning a potential commission witness about his proposed testimony. ***In re Scott***, JUD-7 (November 6, 1984).

The supreme court censured a superior court judge for entering *ex parte* orders favoring her court clerk in a matter assigned to another judge. The judge also made inappropriate remarks during the sentencing of a criminal defendant and then allowed her court reporter to delete the remarks from the record on appeal. ***In re Hendrix***, 145 Ariz. 345, 701 P.2d 841 (1985).

The supreme court censured a justice of the peace for conduct that occurred prior to his holding judicial office. The court found that the judge's suspension from the practice of law for converting the funds of a client and filing a false trust account questionnaire, as well as testifying untruthfully before the commission, merited public censure. The court determined that it had jurisdiction over this prejudicial conduct because the acts were such as to bring the judicial office into disrepute. ***In re Rubi***, 148 Ariz. 167, 713 P.2d 1225 (1985).

A justice of the peace was enjoined by the supreme court from seeking election or appointment as a judge in Arizona for improperly influencing the police, failing to recuse himself, providing false testimony, and abusing alcohol. The judge resigned from office before the commission made a formal recommendation to discipline the judge. ***In re Haines***, JQ-86-0001 (March 18, 1986).

A justice of the peace was publicly censured by the supreme court for falsely certifying that nomination petitions were signed in his presence. ***In re Goodman***, JQ-86-0002 (April 8, 1986).

The commission recommended that a justice of the peace be removed from office for improperly involving himself in a recall election and for simultaneously serving as justice of the peace and a member of the town council. After the commission filed its recommendation with the supreme court and before the court could rule on the case, the judge lost reelection. Even so, the court decided that it had jurisdiction based on the *Weeks* case and publicly censured the judge for his conduct. ***In re Walker***, 153 Ariz. 307, 736 P.2d 790 (1987).

A justice of the peace was arrested for driving under the influence of alcohol. The supreme court censured the judge after concluding that the DUI arrest constituted conduct prejudicial to the administration. ***In re Biggins***, 153 Ariz. 439, 737 P.2d 1077 (1987).

The commission determined that a justice of the peace committed willful misconduct in office when he made sexually suggestive remarks to a female litigant who was applying for a protective order in his court. The judge hugged the young woman and asked her to have a drink with him. This occurred on two different occasions, one of which was tape-recorded by the woman. The supreme court censured the judge for willful misconduct that brought the judicial office into disrepute. The judge later resigned and agreed not to seek appointment or election to judicial office again when new allegations involving sexual harassment came to light. ***In re Ackel***, 155 Ariz. 34, 745 P.2d 92 (1987) and CV-88-0002-SA (January 26, 1988).

A justice of the peace voluntarily stipulated to a public censure without admitting guilt, for conduct relating to *ex parte* contacts, failure to perform duties, and improper judicial demeanor. ***In re Weisenburger***, JQ-88-0001 (January 20, 1988).

A justice of the peace voluntarily stipulated to a public censure for sentencing first-time DUI defendants who were not represented by counsel to ten days in jail contrary to law, and for not complying with statutory requirements relating to search warrants. ***In re Garcia***, JQ-88-0003 (October 14, 1988).

A superior court judge was arrested and convicted in Texas for the possession of marijuana, a possible felony if the judge had been arrested and tried in Arizona on the same charge. Before the trial, the commission recommended to the supreme court that the judge be suspended in office pending the resolution of the criminal proceedings in Texas. The supreme court, which decided the case after the judge had been convicted and fined,

held that the judge had committed a crime punishable as a felony under Arizona law and suspended the judge without salary for one year as a disciplinary sanction for conduct prejudicial to the administration of justice that brought the judicial office into disrepute. ***In re Marquardt***, 161 Ariz. 206, 778 P.2d 241 (1989). Two years after this decision, the judge was arrested and convicted in a separate case involving conspiracy to possess marijuana. He resigned from office and was sentenced to three years probation. He was also fined \$20,000 for false swearing in connection with his earlier testimony before the commission.

The supreme court censured a justice of the peace for permitting the clerks working under his direction and control to accept guilty pleas in DUI cases and for failing to require his staff to observe the standards of fidelity and diligence that applied to the judge. The court also censured the judge for allowing his staff to give the commission information that he should have known was false and improperly interfering with an ongoing criminal investigation involving his son. The court found that the judge's conduct brought the judiciary into disrepute, reflected poorly on the integrity of the judiciary, and created the appearance of impropriety. The judge failed to win renomination. ***In re Lockwood***, 167 Ariz. 9, 804 P. 2d 738 (1990).

The supreme court publicly censured a justice of the peace for conduct that would have justified removal or suspension if the judge had not lost reelection. The court found that the judge gave special treatment to a defendant arrested on an outstanding warrant from another county, used vulgar language in rebuking deputy sheriffs, ordered the arrest of a reserve police officer for refusing to follow an order in an incident arising out of the judge's personal affairs, demonstrated a desire to retaliate against officials outside of his jurisdiction by attempting to secure a temporary appointment in another county and suggesting that another judge lie to justify the appointment, made prejudicial comments in a judicial proceeding involving a person charged with sex-related crimes, and participated in *ex parte* proceedings. Collectively, these acts constituted abuse or corruption of the judicial office, destroyed public confidence in the integrity and impartiality of the judiciary, showed that the judge's personal relationships influenced his judicial conduct and judgment, and manifested a lack of dignity and courtesy to those with whom the judge dealt in his official capacity. ***In re Lehman***, 168 Ariz 174, 812 P. 2d 992 (1991).

The supreme court publicly censured a justice of the peace for conduct that manifested contempt for a person's right to appear before an impartial tribunal. The judge lost reelection. While serving on the board of a

community hospital, the judge presided over numerous cases involving the hospital and failed to disqualify himself even after the conflict was made known. The judge further used a bench-side telephone to obtain advice from "friends of the court" (including arresting officers) and resolve pending cases. Finally, the court found that the judge participated in *ex parte* proceedings with representatives of the state and disposed of cases in a manner that denied defendants their full right to be heard according to law. **In re Anderson**, 168 Ariz. 432, 814 P.2d 773 (1991).

A justice of the peace was censured and suspended for 90 days without pay for conduct that brought the judiciary into disrepute. The court found that the judge acted as an intermediary in business dealings between Mexico and casino owners in Nevada, induced a pro tem judge to sign an order in a case in which he had a conflict of interest, interfered in the investigation of a domestic complaint involving his court clerk, permitted *ex parte* contacts by criminal defense lawyers, gave the impression that a local attorney was favored by the court, failed to disclose his wife's employment on a financial statement, ignored court procedures and fixed traffic tickets, allowed his staff to receive gifts, handled a traffic case in which he was the witness, failed to disclose his relationship with attorneys who appeared before him, appointed an acquaintance as a "justice court police officer," and attempted to gain information about the commission's investigation from court staff, then lied about having done so. The supreme court also required the judge to participate in ethics education courses. **In re Gumaer**, 177 Ariz. 280, 867 P.2d 850 (1994).

The supreme court removed a justice of the peace for wilful misconduct in office and for behaving in a way that brought his judicial office into disrepute. The judge reinstated criminal charges against an election opponent after the charges had been dismissed by another judge. The judge also failed to recuse himself in two matters in which he was personally involved and had a conflict of interest, and engaged in *ex parte* communications in a third case. As aggravating factors, the court considered similar conduct for which the judge had been previously disciplined and the tone and substance of the judge's communications to the court accusing the judiciary of persecuting him. The court concluded that the judge lacked the judgment needed to carry out his duties competently and that removal was appropriate in order to give citizens confidence in the integrity of the judicial system. **In re Peck**, 177 Ariz. 283, 867 P.2d 853 (1994).

A justice of the peace was suspended for 90 days and required to attend ethics training classes for improperly

influencing another judge. The judge intervened in traffic tickets on behalf of her grandson and a long-time friend. The supreme court concluded that the judge abused her office and that her conduct brought the judicial office into disrepute. The court held that the respondent's failure to acknowledge the wrongful nature of her conduct was an aggravating factor and that a non-lawyer justice of the peace is subject to the same ethical standards as a law-trained judge. The court also held that the penalty of censure is subsumed in the greater sanction of suspension. **In re Lorona**, 178 Ariz. 562, 875 P.2d 795, (1994).

A municipal court judge was suspended without pay for the remainder of her term for signing an order to release her boyfriend from jail after she had him arrested for domestic abuse. The supreme court held that the judge committed willful misconduct, regardless of her mental condition at the time she signed the order, because she intentionally used her office for a purpose other than the faithful discharge of her judicial duties. The court ruled that "grossly improper conduct" of this nature can destroy public confidence in the integrity and impartiality of the judiciary, and that substantial weight can be given to a judge's prior disciplinary record in determining the appropriate sanction. **In re Jett**, 180 Ariz. 103, 882 P.2d 414 (1994).

The supreme court suspended a superior court judge until the end of his term in office for using a racial slur about a defendant in his chambers and for habitually using vulgar language in court. Even though the judge had a long judicial career, there was substantial evidence that many citizens had lost faith in his judgment because of his use of racially inflammatory language and chronic use of profanity in official proceedings. The supreme court concluded that such behavior on the part of a judge had a debilitating effect on the administration of justice. **In re Goodfarb**, 179 Ariz. 400, 880 P.2d 620 (1994).

A justice of the peace stipulated to a thirty-day suspension without pay and consented to monitoring by the commission for misconduct in office. The judge, who also agreed not to seek judicial office again after his current term, brought the judiciary into disrepute when he habitually showed up late for court and failed to decide cases or rule on motions in a timely manner. In accepting the commission's recommendation, the supreme court endorsed the procedure used in this case because it corrected the specific problem with the judge's conduct and fostered public confidence in the judicial system's self-policing responsibility. **In re Braun**, 180 Ariz. 240, 883 P.2d 996 (1994).

A justice of the peace who lost reelection to the bench after formal proceedings were instituted against him, signed a stipulated agreement that he would not seek judicial office again. The supreme court approved the agreement which contained admissions that the judge had violated ethical standards by failing to decide cases promptly, by frequently being tardy or absent from the court, and by administering his court improperly. The judge's demeanor toward litigants, attorneys and staff also brought the judiciary into disrepute. ***In re Garcia***, JC-94-0005, 180 Ariz. 294, 884 P.2d 180 (1994).

The supreme court upheld the commission's recommendation to remove a municipal court judge from office for conduct that involved assault, soliciting prostitution, and habitual drinking. The court decided that the solicitation charge, for which the judge was later convicted, was a crime involving moral turpitude and as such constituted conduct prejudicial to the administration of justice that brought the judicial office into disrepute. Although the conduct occurred after hours, discipline is not reserved for judges who engage in improper behavior only while serving in an official capacity. ***In re Koch***, 181 Ariz. 352, 890 P.2d 1137 (1995).

A justice of the peace who was also a city magistrate entered into a stipulated agreement that enjoined her from seeking election or appointment as a judge in Arizona. The charges against the judge involved unethical resolution of civil and criminal traffic tickets, denying criminal defendants the right to counsel, delaying or failing to perform duties, and improper election practices. ***In re Nichols***, JC-96-0001 (March 21, 1996).

A city magistrate was enjoined from seeking election or appointment as a judge in Arizona in a stipulated resolution. The charges against the judge involved allegations that she failed to follow administrative directives, ignored state laws, exceeded her authority when issuing orders of protection and injunctions prohibiting harassment, engaged in improper *ex parte* communications. ***In re Harris***, JC-96-0002 (September 20, 1996).

A superior court judge was publicly censured for use of profanity in chambers and the common areas around his chambers and for drafting letters critical of an incumbent county attorney in an attempt to influence the outcome of the election. ***In re Lerma***, JC-97-0002 (April 14, 1997).

A superior court judge was suspended without pay for 90 days for failing to render decisions in 28 cases within 60 days from the date the matters were submitted or taken under advisement. The judge also signed 18 salary certificates in which he falsely certified that he had no

causes under advisement for more than 60 days. ***In re Bradshaw***, JC-97-0001 (June 6, 1997).

The supreme court publicly censured a superior court judge who negotiated a contract between two private entities while actively serving on the bench. The judge's activities violated the canons barring a judge from practicing law, giving business advice to a person or entity other than one closely held by the judge or his family, or receiving compensation or reimbursement for expenses for extra-judicial activities. The judge's resignation prior to the decision limited the sanctions available to the court but did not relieve it from deciding the matter. The court found aggravation in the fact that the judge failed to request an advisory opinion from the Judicial Ethics Advisory Committee, was less than forthcoming in providing facts about his consulting contract, and attempted to shield those facts by claiming confidentiality. In mitigation, the court noted the judge's long and valuable service, his involvement in an activity that did not negatively affect his performance on the bench, and the fact that he did his consulting work on his own time. ***In re Fleischman***, 188 Ariz. 106, 933 P.2d 563 (1997).

A justice of the peace was suspended from office for 90 days, without pay, and required to take additional training, obtain a mentor judge, and be subject to periodic monitoring for a period of one year. The judge was disciplined, among other things, for repeatedly failing to conduct preliminary hearings, process criminal cases and render decisions in a timely manner, and for signing false salary certifications when matters were under advisement for more than 60 days. ***In re Manuz***, JC-98-0001 (April 10, 1998).

A municipal court judge was censured for repeatedly losing his temper and yelling at young defendants in the courtroom, for causing a defendant to incur a contempt charge, and for altering the official record in a case to remove an expletive. Additional training and mentoring were also imposed on the judge. ***In re Morales***, JC-98-0002 (September 11, 1998).

A municipal court judge was suspended for repeatedly making inappropriate comments to attorneys and defendants in the courtroom, for making offensive and suggestive comments to court staff, and for untimely rulings. The judge was suspended for two months, but given credit for one month of suspension previously imposed by the city. ***In re Pearlman***, JC-98-0003 (December 10, 1998).

A justice of the peace was censured for conduct that demeaned and brought his judicial office into disrepute because of his misdemeanor conviction for criminal

damage and disorderly conduct for which he was sentenced to 24 months unsupervised probation, completion of a drug and alcohol screening and rehabilitation program, domestic violence counseling and restitution. **In Re Guzman**, JC-99-0001 (January 25, 1999).

A part-time municipal judge who operated an automobile towing company was suspended for 90 days for refusing to surrender a vehicle promptly to its rightful owner after the state motor vehicle division revoked the title issued to the judge. Because of the judge's part-time status, the suspension resulted in a cumulative total of only six days off the bench. **In re Curfman**, JC-98-0004 (April 20, 1999).

A superior court judge was publicly censured for improper political activities, failure to correct or prevent inappropriate behavior of a pro tem superior court judge, active participation in another judge's political campaign, and improper use of official court stationery to threaten a police officer. **In re Montiel**, JC-97-0003 (May 26, 1999).

The supreme court suspended a superior court judge for 18 months (12 without pay) for repeatedly losing his temper and shouting in anger at attorneys, litigants and court staff, both inside and outside of the courtroom. The judge engaged in *ex parte* communications and made inappropriate comments to female attorneys. The judge also tampered with an official court record for the purpose of concealing a statement he made in chambers that tended to show bias against a defendant whose case was before him. **In re Flourney**, 195 Ariz. 441, 990 P.2d 642 (1999).

A municipal court judge stipulated to a public censure for failing to afford a defendant the right to be heard, initiating improper *ex parte* communications concerning a matter on appeal, and then failing to disqualify himself from hearing a subsequent motion for reconsideration on remand. **In re Ventre**, JC-00-0001 (January 2000).

A superior court judge in Tucson was convicted in federal court for filing false tax returns and for structuring currency transactions in violation of federal law. The judge resigned from office in January 1997, just before the commission filed a recommendation with the state supreme court to remove the judge. The commission found that the judge's gambling became so excessive that an otherwise legal activity turned into an uncontrollable and destructive habit. Following a lengthy and unsuccessful appeal of the judge's conviction in the federal court, the supreme court issued an order in February 2000 dismissing the matter as moot because the judge resigned from the bench. **In re Scholl**, JC-96-0004 (February 18, 2000).

The supreme court removed a justice of the peace for habitual tardiness, making off-color remarks to court employees, circulating racist, sexist, and obscene materials, engaging in improper *ex parte* communications, failing to recuse himself and otherwise creating an appearance of bias, using his judicial position inappropriately, failing to respect the rights of litigants before him, and failing to adequately perform his judicial responsibilities. The court, while giving serious consideration to the commission's recommendation that the judge be permitted to resign with a disability based on the judge's belief that he suffered from narcolepsy, found that removal better served the goals of maintaining high judicial standards, protecting the public and assuring that such conduct would not be tolerated. **In re Carpenter**, JC-00-0002 (January 18, 2001).

A superior court judge stipulated to a censure and was ordered to attend workplace gender-sensitivity training for making sexually inappropriate comments to an employee, for keeping alcohol in chambers, and for offering drinks to employees after court hours. The judge also acknowledged that two other employees had complained of what were perceived as sexually inappropriate comments. The stipulation included a provision to reopen the case if the training were not completed, if there was evidence of retaliation by the judge, or if the conduct in question was repeated. **In re Irwin**, JC-00-0003 (November 29, 2000).

A justice of the peace resigned from office after the commission filed two recommendations for his removal with the supreme court. The first recommendation for removal was filed against the judge for making biased and offensive remarks to litigants, displaying handcuffs and threatening defendants with contempt for failing to mediate in good faith, improperly dismissing cases with prejudice, and failing to maintain proper decorum in the courtroom. The judge also had been repeatedly intolerant, impatient, sarcastic and patronizing toward defendants in a series of forcible detainer cases and mistreated litigants and attorneys in other cases. A second recommendation for removal was filed against the justice of the peace for making offensive racial comments while serving as a judge. Since the judge had already resigned, the supreme court issued an order enjoining him from seeking or holding judicial office in Arizona. **In re Dobronski**, JC-01-0001 and JC-01-0002 (February 22, 2002).

A justice of the peace stipulated to a public censure for being absent or late while litigants were waiting for scheduled proceedings, performing marriages for com-

pensation during court hours, accepting Mexican drivers licenses as a defense to driving without a license for individuals residing in Arizona, and for signing an injunction prohibiting a former political opponent from going near a business he owns. ***In re Villegas***, JC-02-0002 (November 18, 2002).

A justice of the peace was charged with 29 allegations of incompetence and five allegations of improper decorum in carrying out her judicial duties. Prior to the filing of formal charges, the judge had been informally reprimanded and directed to attend additional training. The judge admitted to 12 of the allegations, consented to a two-month suspension, and agreed to complete a mentoring program. The supreme court entered an order suspending the judge for 60 days, without pay, and requiring her to participate in a 90-day mentoring program under the full-time supervision of an experienced judge. The court also required the judge to apply for a certificate of compliance indicating that she had remedied the deficiencies underlying the admitted ethical violations. After receiving the final report from her mentor judge, but prior to the compliance hearing before the commission, the judge resigned from her position as justice of the peace. ***In re Watkins***, JC-03-0001 (December 16, 2003).

A male superior court judge was charged with having an unprofessional or inappropriate relationship with a female deputy county attorney who regularly appeared before him as counsel of record. The judge was also charged with assaulting his wife. After a hearing, the hearing panel issued findings of fact, conclusions of law, and recommendations, which included a finding that the judge had committed the misconduct alleged and that he had been untruthful in his initial responses to the allegations. The hearing panel also recommended that the judge be removed from judicial office. On the day his response to the supreme court was due, the judge resigned. The supreme court ordered the judge to pay a portion of the costs associated with the proceedings. ***In re Nelson***, JC-03-0002 (April 22, 2004).

A municipal court judge stipulated to public censure for issuing an order that appeared to be a response to the city attorney's legal opinion that the judge's employment contract was invalid; filing a bar complaint against the city attorney that appeared to be retaliatory; incorrectly documenting that a defendant and the city attorney had entered into a plea bargain and that the defendant was satisfied with her attorney's services; going to the defendant's place of employment to discuss documentation of her guilty plea; and using inappropriate and vulgar language in the courtroom and on a court pleading. ***In re Thomson***, JC-04-0001 (April 19, 2004).

A municipal court judge stipulated to public censure for improperly ordering the release of his daughter's friend shortly after the friend had been arrested. Because the judge resigned for medical reasons, the supreme court declined further review of the case. ***In re Forgach***, JC-04-0002 (April 22, 2004).

A justice of the peace stipulated to suspension, training and mentoring for incompetence, misconduct, and improper judicial demeanor. A pattern of incidents established that the judge lacked the requisite ability, knowledge, or judgment to consistently and capably discharge the duties of his office. ***In re Romney***, JC-04-0003 (June 29, 2004).

A justice of the peace stipulated to a 30-day suspension and ongoing mentoring for ruling in several cases without providing adequate notice to the parties, granting a summary judgment on his own motion without waiting for one of the parties to request this action, issuing inconsistent rulings in a case involving a claim and counterclaim, and personally loaning money to a party to post a bond. ***In re Johnson***, JC-04-0004 (August 16, 2004).

A municipal court judge stipulated to public censure, training, and mentoring for attempting to begin proceedings before a defendant's attorney was present, for asking the city attorney for legal advice during a trial in which the attorney was not a party, for being rude and demeaning towards a spectator and an attorney, and for speaking to a witness in a case outside the presence of the parties. ***In re Hatch***, JC-04-0005 (November 26, 2004).

A justice of the peace stipulated to public censure for repeatedly arriving late for court and keeping litigants, attorneys, and staff members waiting. ***In re McVay***, JC-05-0002 (March 22, 2005).

A judge sitting as both a municipal court judge and as a justice of the peace stipulated to public censure and mentoring for failing to follow mandatory sentencing requirements in DUI and suspended license cases, for shortening mandatory jail sentences, and for appearing to show favoritism when he dismissed several charges and waived fines for a county official's relative. ***In re Overson***, JC-05-0003 (September 8, 2005).

The Purpose of Judicial Discipline

The purpose of judicial discipline is not to punish the individual judge, but to maintain the high standards of the judiciary and the proper administration of justice. Judicial discipline protects the public and the integrity of the judicial process and is a balancing of the need for an independent judiciary with the necessity for removal of those who do not measure up to the high standards required of a person holding judicial office.

Arizona Supreme Court, *In re Haddad*,
128 Ariz. 490, 492 (1981)

Four things belong to a judge: to hear courteously;
to answer wisely; to consider soberly; and
to decide impartially.

–Socrates–